

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HENRIETTA W. CAMPER,

Plaintiff,

v.

SAFEWAY, INC.; J.C. PENNEY
CORPORATION, INC.,

Defendants.

CASE NO. 2:23-cv-638

ORDER

1. INTRODUCTION

This matter comes before the Court on Plaintiff Henrietta W. Camper's Objection to Defendant Safeway, Inc.'s Notice of Removal and Motion to Remand to State Court. Dkt. No. 7. Having considered Camper's request and Safeway's response, the Court GRANTS Camper's motion.

2. BACKGROUND

Camper alleges that she slipped and injured her knee inside a Safeway grocery store in Seattle, Washington, in 2018. Dkt. No. 5-1 at 5 ¶ 3.2. Camper sued Safeway in King County Superior Court and served Safeway with her complaint on October 23, 2020. Dkt. No. 8 at 2 ¶ 6. For reasons that are unclear, Camper also

1 named J.C. Penney Corporation as a defendant in the lawsuit. Dkt. No. 5-1 at 1.
2 Safeway served Camper with written discovery requests on November 20, 2020.
3 Dkt. No. 10 at 2 ¶ 4. On or about that same date, the state court stayed the matter
4 for co-defendant J.C. Penney's bankruptcy proceedings. Dkt. No. 5-1 at 292 ¶ 3. It is
5 not clear from the record, which event occurred first—the stay or service of
6 Safeway's discovery requests.

7 Safeway alleges Camper did not answer its discovery requests and that she
8 failed to provide a statement of her damages to Safeway pursuant to RCW 4.28.360
9 during the stay. Dkt. No. 10 at 2 ¶ 6. After two years, the automatic bankruptcy
10 stay was lifted and Safeway again requested a statement of damages and responses
11 to its discovery requests from Camper on January 10, 2023. *Id.* at 3 ¶ 7. Safeway
12 claims Camper did not respond to these requests or its efforts to schedule a
13 discovery conference. *See id.* ¶ 9.

14 On February 17, 2023, Safeway moved to compel Camper to disclose the
15 amount of damages she claimed for her injuries and for responses to its discovery
16 requests. *Id.* ¶ 10. On February 24, 2023, Camper responded, "Plaintiff will note
17 this case for mandatory arbitration and will stipulate to the MAR damages
18 limitation of \$100,000." Dkt. No. 5-1 at 338. In response to Safeway's request for an
19 itemization of Camper's medical treatment for her alleged injuries, Camper stated
20 "[t]his matter is still under investigation and this response will be supplemented.
21 Plaintiff currently does not know the exact amount of medical special damages
22 related to the subject incident," and that she "is not making an income loss claim."
23 *Id.* On March 13, 2023, the state court entered an order compelling Camper to

1 provide a statement of damages and to answer Safeway's discovery requests "within
2 ten days." Dkt. No. 5-1 at 345-6.

3 On March 23, 2023, Camper made a motion to move the matter to mandatory
4 arbitration. Dkt. No. 5-1 at 367. The next day, Camper moved the state court to
5 reconsider its order compelling her to produce a statement of damages and
6 responses to Safeway's discovery requests. Dkt. No. 5-1 at 406. Camper claimed
7 that reconsideration was warranted because she served her discovery responses on
8 Safeway on February 24, 2023, which was only days after Safeway moved to compel
9 and before the hearing date on the motion. *Id.* at 410-412. Camper also argued
10 reconsideration was warranted because, "[t]o the extent there is continuing
11 disagreement as to the adequacy of our responses, the parties should first engage in
12 a discovery conference to try to resolve these differences before seeking further
13 Court assistance." *Id.* at 412. The state court denied each of Camper's requests. Dkt.
14 No. 5-1 at 400, 465; Dkt. No. 12 at 2 ¶ 9.

15 On April 5, 2023, Safeway requested a discovery conference with Camper to
16 discuss the amount of damages she claimed, but Camper's counsel responded that
17 he would not be available until April 17, 2023. Dkt. No. 10 at 5 ¶ 18. Camper agreed
18 to submit the matter to mandatory arbitration with a maximum possible recovery of
19 \$100,000. Dkt. No. 12 at 3 ¶ 12(2). On April 21, 2023, Camper provided Safeway an
20 amended response to Safeway's request for statement of damages. *Id.* ¶ 14. In a
21 supplemental response to Safeway's request for general damages, Camper
22 responded with the following:
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1 Plaintiff currently lacks sufficient information to determine the exact
2 amount of general damages that will be claimed. In particular, some
3 medical treatment records have not been located. Based solely on
4 information presently available, plaintiff intends to claim \$200,000 in
5 general damages but is prepared to enter mandatory arbitration and is
6 prepared to accept the jurisdictional limit of \$100,000 in total damages.

7 *Id.* at 14.

8 Safeway filed its notice of removal to federal court from King County
9 Superior Court on May 1, 2023. Dkt. No. 1. Camper now claims that her claim is not
10 “likely to exceed \$75,000 in total value,” and that she will “limit her claim to
11 \$75,000 or less.” Dkt. Nos. 8 at 3 ¶ 14, 12 at 4 ¶ ¶ 17-19 . In a May 26, 2023,
12 amendment to her statement of damages, Camper limits her damages to \$75,000.
13 Dkt. No. 12, Ex. C.

14 3. ANALYSIS

15 3.1. Legal standard.

16 Under 28 U.S.C. § 1441(a), “[a] defendant generally may remove an action
17 filed in state court if a federal district court would have had original jurisdiction
18 over the action,” *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 415 (9th Cir.
19 2018), which may be based on diversity of parties when the amount in controversy
20 “exceeds the sum or value of \$75,000, exclusive of interest and costs.” *Gonzales v.*
21 *CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016) (citing 28 U.S.C. §
22 1332(a)) (cleaned up). The removal statute is “strictly construe[d] . . . against
23 removal jurisdiction.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).
“Federal jurisdiction must be rejected if there is any doubt as to the right of removal
in the first instance.” *Id.* Because there is a “strong presumption” against removal

1 jurisdiction, “defendant[s] always ha[ve] the burden of establishing that removal is
2 proper.” *Id.* Removal must be timely. *Fritsch v. Swift Transp. Co. of Arizona, LLC*,
3 899 F.3d 785, 788 (9th Cir. 2018).

4 There is no dispute about whether there is complete diversity between the
5 parties; rather, the questions before the Court are whether the amount-in-
6 controversy exceeds \$75,000 and whether Safeway timely removed the action from
7 state court.

8 **3.2. Safeway has met the amount-in-controversy threshold.**

9 The Court first considers whether the amount in controversy meets the
10 jurisdictional threshold under 28 U.S.C. § 1332(a). When it is unclear or ambiguous
11 from the state court complaint whether the amount-in-controversy pled meets the
12 jurisdictional threshold, it is the removing-defendant’s burden to establish by a
13 preponderance of the evidence the amount in controversy exceeds the threshold.
14 *Urbino v. Orkin Servs. of Cal., Inc.*, 726 F.3d 1118, 1121–22 (9th Cir. 2013) (citing
15 *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007)); *Sanchez v.*
16 *Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996)). A defendant may point
17 to different types of evidence, but “[a] particularly powerful form of evidence is the
18 plaintiff’s own statements about the damages they seek.” *Flores v. Safeway, Inc.*,
19 No. C19-0825-JCC, 2019 WL 4849488, at *3 (W.D. Wash. Oct. 1, 2019) (citation
20 omitted).

21 Safeway argues that the amount in controversy meets the jurisdictional
22 threshold, pointing to Camper’s statements valuing her case about \$75,000. Most
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1 notably, in her statement of damages made under RCW 4.28.360,¹ Camper states,
2 “[b]ased solely on information presently available, *plaintiff intends to claim*
3 *\$200,000 in general damages* but is prepared to enter mandatory arbitration and is
4 prepared to accept the jurisdictional limit of \$100,000 in total damages.” Dkt. No.
5 10-1 at 2 (emphasis added).

6 After removing the case to federal court, however, Camper supplemented her
7 statement of damages, agreeing to “limit her total recovery ... to a maximum of
8 \$75,000.” Dkt. No. 12 at 14; *see also* Dkt. No. 8 at 3 ¶¶ 14, 17. Camper argues in her
9 motion that this lower estimate is supported by yet-to-be-obtained medical records
10 that would show one doctor’s visit and x-ray following her fall. Dkt. No. 8 at 2 ¶¶ 10,
11 11. Camper also claims that she is not seeking to recover for lost income. *Id.* ¶ 13.

12 The Court finds Safeway has satisfied the amount in controversy
13 requirement for removal by relying on Camper’s statement of damages that she
14 intended to claim \$200,000 in general damages. *Flores*, 2019 WL 4849488, at *3 (“A
15 statement of damages made pursuant to § 360 is especially relevant evidence of how
16 the plaintiff values their case.”). This amount is not unreasonable given Camper’s
17 claims that she was “severely injured” by Safeway’s alleged negligence and that her
18 “injuries together with pain, discomfort and limitation of movement prevail and will
19 continue to prevail for an indefinite time into the future.” Dkt. No. 1-2 at 6 ¶ 3.7.

20 Camper’s supplemental damages disclosures, along with Camper’s counsel’s
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22 ¹ In relevant part, RCW 4.28.360 states: “A defendant in [any civil action for
23 personal injuries] may at any time request a statement from the plaintiff setting
forth separately the amounts of any special damages and general damages sought.”

1 equivocal statements that her claim “may” be less than \$75,000 or that she will
2 accept less than this amount, are perhaps an “attempt to game the system” to avoid
3 this Court’s jurisdiction. *Sinclair v. Home Depot, U.S.A., Inc.*, No. C19-1971-JCC,
4 2020 WL 6887914, at *2 (W.D. Wash. Nov. 24, 2020). But this Court’s jurisdiction
5 was determined at the time the action commenced, at which point Camper claimed
6 \$200,000 in damages, and the Court “is not divested of jurisdiction . . . [because] the
7 amount in controversy subsequently drops below the minimum jurisdictional level.”
8 *Hill v. Blind Indus. & Servs. of Maryland*, 179 F.3d 754, 757 (9th Cir.), *opinion*
9 *amended on denial of reh’g*, 201 F.3d 1186 (9th Cir. 1999). Safeway has met its
10 burden to show Camper’s claim met required amount in controversy under 28
11 U.S.C. § 1332(a) at the time of removal.

12 **3.3. Safeway’s removal was untimely under 28 U.S.C. § 1446(c)(1).**

13 The Court next considers Camper’s argument that Safeway’s notice of
14 removal was untimely based on 28 U.S.C. § 1446(c)(1). The removal statute provides
15 “[a] case may not be removed under subsection (b)(3) on the basis of jurisdiction
16 conferred by section 1332 more than 1 year after commencement of the action,
17 unless the district court finds that the plaintiff has acted in bad faith in order to
18 prevent a defendant from removing the action.” 28 U.S.C. § 1446(c)(1). If the court
19 finds the plaintiff “deliberately failed to disclose the actual amount in controversy to
20 prevent removal, that finding shall be deemed bad faith” 28 U.S.C. §
21 1446(c)(3)(B).

22 The Ninth Circuit has not clarified “bad faith” under 28 U.S.C. § 1446(c). *See*
23 *Herrington v. Nature Conservancy*, No. CV 21-240-GW-GJSX, 2021 WL 942749, at

1 *3 (C.D. Cal. Mar. 11, 2021). But “[i]n determining bad faith, courts have generally
2 inquired whether the plaintiff engaged in strategic gamesmanship designed to keep
3 the case in state court until the one-year deadline has expired.” *Torres v. Honeywell,*
4 *Inc.*, No. 2:20-CV-10879-RGK-KS, 2021 WL 259439, at *3 (C.D. Cal. Jan. 25, 2021)
5 (citing *Heacock v. Rolling Frito-Lay Sales, LP*, No. C16-0829-JCC, 2016 WL
6 4009849, at *3 (W.D. Wash. July 27, 2016); *Aguayo v. AMCO Ins. Co.*, 59 F. Supp.
7 3d 1225, 1263 (D.N.M. 2014)). District courts have considered a plaintiff’s subjective
8 intent when taking action that inhibits removal. *Heacock*, LP, 2016 WL 4009849, at
9 *2 (considering plaintiffs’ subjective intent in naming a non-diverse defendant).
10 Courts have also noted that bad faith “carries with it a high threshold and entails
11 actions tantamount to recklessly raising a frivolous argument or disrupting and
12 hindering court proceedings.” *Heacock*, 2016 WL 4009849, at *2 (considering bad
13 faith in the context of awarding sanctions) (citing *Escalante v. Burlington Nat.*
14 *Indem., Ltd.*, WL 6670002, at *3 (C.D. Cal. Nov. 24, 2014)). “The presumption
15 against removal, coupled with Ninth Circuit precedent holding that bad faith in the
16 sanctions context is a high burden,” has led courts in this district “to conclude that
17 defendants face a high burden to demonstrate that a plaintiff acted in bad faith to
18 prevent removal.” *Id.* at *3.

19 Safeway’s removal comes one-year after Camper filed and served her
20 complaint, so it’s only hope of demonstrating that removal was proper under the
21 statute is showing that Camper acted in bad faith as that term is used in 28 U.S.C.
22 § 1446(c). Safeway falls short in this respect.

1 Safeway points to no facts showing that Camper “engaged in strategic
2 gamesmanship designed to keep the case in state court until the one-year deadline
3 has expired” before the expiration of its deadline to remove this matter on October
4 23, 2021. *See Torres*, 2021 WL 259439, at *3. According to Safeway’s papers in state
5 court, Defendant J.C. Penney gave notice that the matter was “subject to an
6 automatic stay related to its bankruptcy” on or about November 2, 2020—the same
7 day Safeway propounded its discovery requests to Camper. Dkt. No. 5-1 at 292 ¶ 3;
8 Dkt. No. 10 at 2 ¶ 4. Safeway argues Camper failed to respond to its requests, but
9 the record reflects that Camper made a timely request on December 2, 2020, for an
10 extension to respond to Safeway’s discovery requests. Dkt. No. 5-1 at 297. In
11 response, Safeway’s counsel acknowledged that the matter was stayed, “but [] it
12 would be helpful to us to determine potential records sources and start collecting
13 records if that is acceptable to you.” *Id.* at 296. Safeway’s next email to Camper is
14 on April 1, 2021, requesting answers to Safeway’s discovery requests, including a
15 statement of damages. *Id.* Camper responded the same day that she will not
16 participate in further litigation on the case because of the bankruptcy stay. *Id.* at
17 295-6. Safeway does not appear to email Camper again until after the stay was
18 lifted on January 11, 2023. *Id.* at 295-6.

19 Thus, Safeway oversells the notion that Camper “refused” to answer its
20 discovery requests during the stay. If Safeway disagreed with Camper’s position
21 about the stay, it failed to say as much at the time. *See id.* at 296. Indeed, Safeway’s
22 response in its December 2, 2020, email (“[t]hat’s fine[;] [w]e are stayed by the
23 bankruptcy stay . . .”) implies it shared Camper’s view of the stay. *See id.* So it

1 cannot be said that Camper acted in bad faith to disrupt or hinder the proceedings
2 when Safeway made two requests to Camper, with minimal follow-up, before
3 October 23, 2021. Safeway focuses on Camper's responses after this date; whether
4 Camper acted in bad faith after October 23, 2021, is immaterial under 28 U.S.C. §
5 1446(c) because Safeway's deadline for removal had already passed. Dkt. No. 1,.
6 Ultimately, the stay, not Camper, prevented Safeway from removing this matter
7 before the one-year deadline.

8 Admittedly, J.C. Penney's automatic bankruptcy stay placed Safeway in a
9 difficult position—Safeway did not know the amount in controversy at the time this
10 matter was filed and did not have time to learn of the amount through discovery by
11 the time the automatic stay was in place. *See, e.g.*, Dkt. Nos. 5-1 at 11; 5 at 7 ¶¶
12 4.1, 4.2; CR 33(a); CR 34(b)(3)(A); CR 36(a). Safeway's briefing does not directly
13 address the effect of the bankruptcy stay, if any, on § 1446(c), nor does Safeway
14 argue that the one-year deadline should be tolled. *See* Dkt. No. 9.

15 There are scant cases on this subject in the Ninth Circuit and beyond. *See*
16 *Nocelli v. Kaiser Gypsum Co., Inc.*, No. 19-CV-1980 (RA), 2020 WL 230890, at *4-5
17 (S.D.N.Y. Jan. 15, 2020) (holding bankruptcy stay did not toll one-year time limit
18 under 28 U.S.C. § 1446(c)(1)); *see also Three Pirates, LLC v. Shelton Bros., Inc.*, No.
19 3:16-CV-01054-JE, 2016 WL 6534523, at *4 (D. Or. Sept. 27, 2016), *report and*
20 *recommendation adopted*, No. 3:16-CV-01054-JE, 2016 WL 6561557 (D. Or. Nov. 1,
21 2016) (holding order staying state court proceedings did not create equitable
22 exception to 30-day limit for removal).

1 The Ninth Circuit’s opinion in *Patterson v. Int’l Bhd. of Teamsters, Loc. 959*,
2 121 F.3d 1345, 1348–49 (9th Cir. 1997), is worth a closer look. There, a plaintiff
3 brought an action in state court against his former employer and his labor union as
4 well as various other defendants. *Id.* at 1348. The state court dismissed the
5 plaintiff’s action against his former employer, but the state court stayed his action
6 against the union because it had earlier filed bankruptcy under 11 U.S.C. § 362. *Id.*
7 The plaintiff’s action proceeded against the other defendants. *Id.* Once the
8 bankruptcy court permitted it, the union removed to federal court—six years after it
9 had received service of process in plaintiff’s lawsuit. *Id.* at 1348. On appeal from the
10 district court’s denial of his motion to remand, plaintiff argued the union failed to
11 remove within 30 days of service under 28 U.S.C. § 1446(b). The union argued that
12 it timely removed because it removed within 30 days of relief of the bankruptcy
13 court’s automatic stay. *Id.* The Ninth Circuit agreed with the debtor-union, holding
14 that “[i]f an automatic stay is in effect at the time the plaintiff files a state court
15 action . . . the thirty-day period for removal does not begin to run until relief is
16 obtained from the automatic stay.” *Id.* (citing *Easley v. Pettibone Michigan Corp.*,
17 990 F.2d 905, 908–09 (6th Cir. 1993)).

18 Safeway does not argue for *Patterson*’s applicability to either 28 U.S.C. §
19 1446(b) or 1446(c), and if it had, it would not help here. When creating its exception
20 to § 1446(b), the *Patterson* court based its holding on the union’s status as the
21 debtor, reasoning that if the 30-day limit for removal began to run before the
22 bankruptcy stay was lifted in a case in which the stay was pending at the time
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1 lawsuit began, “a debtor [would] be forced to continue to litigate the claim, [and] the
2 purposes underlying the automatic stay would be thwarted.” *Id.*

3 Here, J.C. Penney, not Safeway, was the debtor. Further, as the *Patterson*
4 court notes—in passing—the state court proceedings continued as to the other
5 defendants; this implicitly suggests that actions against non-debtor defendants
6 could proceed. *See id.* This possibility is supported by more recent Ninth Circuit
7 bankruptcy courts holding that “[a]though the scope of the automatic stay is broad,
8 it does not stay all proceedings.” *In re Palmdale Hills Prop., LLC*, 423 B.R. 655, 663
9 (B.A.P. 9th Cir. 2009), *aff’d*, 654 F.3d 868 (9th Cir. 2011). Safeway does not state,
10 and the record does not reflect, that Safeway ever tried to proceed against Camper
11 in any fashion, if even to pursue discovery about the amount-in-controversy or to
12 seek clarification from any court about the scope of the stay. The potential reach of
13 *Patterson* aside, the facts here suggest that non-debtor Safeway’s inaction, rather
14 than any alleged bad-faith conduct by Camper, foreclosed removal.

15 In any event, the Court declines to reframe Safeway’s arguments or to reach
16 issues not presented. The Court thus does not consider whether Safeway had a
17 viable argument for removal because of the stay, and considering Safeway’s “high
18 burden,” concludes that Safeway’s deadline to remove this matter to this court
19 expired one year after commencement of this action.²

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21 ² While Safeway’s removal is barred, Camper’s argument that it was untimely
22 under 28 U.S.C. § 1446(b)(1) fails. “[N]otice of removal may be filed within thirty
23 days after receipt by the defendant . . . of . . . other paper from which it may first be
ascertained that the case is one which is . . . removable.” 28 U.S.C. § 1446(b)(3).
This deadline “only applies if the case stated by the initial pleading is removable on
its face.” *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005).

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4. CONCLUSION

Safeway's removal is untimely under 28 U.S.C. § 1446(c). The matter is to be REMANDED. Safeway's pending motion for contempt under Dkt. No. 14 is STRICKEN as moot.

It is so ORDERED.

Dated this 9th day of November, 2023.



Jamal N. Whitehead
United States District Judge

Camper's complaint did not include damages. Dkt. No. 1-2. Safeway could not have known Camper's alleged damages until Camper produced the amended statement of damages for \$200,000 on April 21, 2023. *See* Dkt. No. 12 at 14.